

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, February 19, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Steve Duvall, Patte Newman, Greg Schwinn, Mary Bills-Strand and Tommy Taylor (Gerry Krieser, Roger Larson and Cecil Steward absent); Marvin Krout, Ray Hill, Brian Will, Becky Horner, Duncan Ross, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held February 5, 2003. Newman moved to approve the minutes, seconded by Carlson and carried 5-0: Carlson, Newman, Schwinn, Bills-Strand and Taylor voting 'yes'; Duvall abstaining; Krieser, Larson and Steward absent.

### **CONSENT AGENDA**

### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

### **BEFORE PLANNING COMMISSION:**

February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 2001 and STREET AND ALLEY VACATION NO. 03000.**

Schwinn acknowledged that Chuck Salem had called him and apologized for not being able to attend today's hearing.

Carlson moved to approve the Consent Agenda, seconded by Taylor and carried 6-0: Carlson, Duvall, Newman, Schwinn, Bills-Strand and Taylor voting 'yes'; Krieser, Larson and Steward absent.

**CHANGE OF ZONE NO. 3393**  
**FROM I-1 INDUSTRIAL TO B-3 COMMERCIAL**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 27<sup>TH</sup> STREET AND Y STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed by the Commissioners.

Proponents

**1. Kent Seacrest** appeared on behalf of the applicant, **B & J Partnership**. This change of zone also involves a proposed redevelopment project that is anticipated to be on first reading and public hearing before the City Council one week from Monday (March 3, 2003). This proposal talks about taking down three very difficult buildings along No. 27<sup>th</sup> near Y Street—the old broom factory, the building next to it which used to be a pawn shop (which the city owns at the moment), and a gas station. The Redevelopment Plan calls for removal of all three buildings with B & J Partnership (being the redeveloper of record) constructing two buildings, one being a health care clinic and the other being some type of retail or office building. It is believed that the B-3 zoning is more appropriate with those types of uses and that the I-1 is not in the neighborhood's best interests. The Planning and Urban Development Departments support this request.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Bills-Strand made a motion for approval, seconded by Newman.

Duvall supports this kind of private activity doing public good. This will be a commendable project and he would like to see more of it.

Motion for approval carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**CHANGE OF ZONE NO. 3385**  
**FROM AGR AGRICULTURAL RESIDENTIAL**  
**TO R-1 RESIDENTIAL**  
**and**  
**WAIVER NO. 03000**  
**TO WAIVE SIDEWALKS AND STREET TREES,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 66<sup>TH</sup> STREET AND PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

Staff recommendation: Deferral of the change of zone and approval of the waiver.

There were no ex parte communications disclosed by the Commissioners.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Vic Hannan**, the owner of the lot which is the subject of this application. The purpose of this change of zone is to divide this 3.5 acre lot into two lots by administrative final plat, one of which would be approximately 2 acres and the other about 1.5 acres. As the staff report indicates, this is something that would allow for more efficient use of the land and is supported by the Comprehensive Plan. It is the type of resubdivision that the Comprehensive Plan anticipates to occur within older acreage subdivisions.

Hunzeker suggested that the staff report seems a bit inconsistent on the change of zone in that it says it is consistent with Comprehensive Plan; is more efficient use of the land; and consistent with the surrounding area, but that it should be accompanied by a preliminary plat that says we are subject to R-1 densities. Hunzeker does not know where that comes from. It is not the intent of the owner nor the desire of the surrounding property owners to see this divided into lots of that size. The entire Country Meadows subdivision is one to two-acre lots. All of the lots in this subdivision are developed with fairly significant homes. It is very, very unlikely that there would be resubdivision of this area into 9,000 sq. ft. lots with 60' of frontage. The lots are mostly too deep to meet the subdivision requirements with 60' of frontage. He does not believe most of the people out there would be willing to give up any of their yards to do that and he does not believe they would be very happy to see that occur anywhere within Country Meadows.

Country Meadows has rural standard asphalt streets, which are not necessarily designed to accommodate urban density types of uses. "We've been through this in several other

locations.” This is the kind of project which is consistent with what exists and what is anticipated in the Comprehensive Plan.

Hunzeker noted that the staff is recommending approval of the waiver requests on the administrative final plat. He acknowledged that they do need to resolve a couple of issues with Public Works prior to City Council hearing. Those issues pertain to access to Pine Lake Road, which was relinquished in the Country Meadows subdivision. He believes they may be able to get access to this lot by paying for some portion of the upgrading of Pine Lake Road as it abuts the new lot. This is the direction they have been headed and they need to work out the water service issues. Hunzeker requested that the Commission vote on both applications and forward them on to the City Council.

Carlson suggested putting the cul-de-sac on Ann’s Court, even though it is on other people’s property. Hunzeker believes there are two houses to the north of this lot that come off of Ann’s Court, as opposed to one as shown on the aerial photo. He also believes it would be very difficult to convince the owners of those properties to give this owner some access.

There was no testimony in opposition.

#### **Staff questions**

Carlson asked staff to respond to the access issue. Brian Will of Planning staff agreed that to be the issue and the staff report focuses on that issue in #3 of the Analysis. The issue isn’t so much that we want to see how this property can be developed into 9,000 sq. ft. lots, although we think it would be a good idea. The real issue is how can this property be further subdivided and how can we provide access to it. This change of zone was accompanied by an administrative final plat to subdivide into two lots. Staff noted that access to Pine Lake Road had been relinquished and, during the course of staff review, staff was not willing to provide another driveway onto Pine Lake Road, which is an arterial. The discussion has been around the issue of how this property can be subdivided and provide access without another driveway on Pine Lake Road. The recommendation for deferral on the change of zone is because the issue of access needs to be resolved prior to approving the change of zone. Staff is not opposed to the further subdivision but needs to have the access issue resolved.

Carlson wondered whether staff has another solution. Will referred to #5 of the staff Analysis, which indicates that several potential options for providing access have been discussed among staff; however, the staff would not be able to respond on the applicant’s behalf as far as feasibility of any of those options. The recommendation of deferral suggests that the staff be given the opportunity to work with the applicant on other options.

Schwinn referred to Country Meadows and Lee Summit to the north, which are AGR zoning and which have been annexed. Is they on city water? Will acknowledged that those properties are on city water. There is access to municipal services. Schwinn noted that there are a lot of driveways on the south side of Pine Lake Road.

**Response by the Applicant**

Hunzeker stated that it is not as if the applicant hasn't had any discussion about the access issue. There are two potential ways to get to this property: 1) by taking a second driveway in off of 66<sup>th</sup> Street, which creates a very unsightly means of access as it relates to the existing house and a very, very long driveway--this is not desirable; or 2) the applicant has had conversations with Planning and Public Works about the possibility of regaining access to Pine Lake Road and it has been suggested that that would cost this owner the equivalent of one-half of a local street paving along the frontage of the new lot (which at this point in time the owner is prepared to discuss seriously, if not agree upon). Both that and the issue of water service can be worked out between now and the time this has to be dealt with by City Council. The rezoning of this site does not require having those things worked out. Frankly, this rezoning plus the waivers of the design standards will facilitate having this finalized when we get to City Council. If we can't do that, this is going to have to sit for awhile. The alternative is for this to sit a very long time with the excess land ultimately being incorporated into property that goes to the corner of 70<sup>th</sup> and Pine Lake Road. The only thing between here and that corner is a very small church building which, given the development that is likely to occur in this area over the next several years, could very easily become assembled into something other than residential uses. We think this is a way to set this up for residential use for the foreseeable future, and if it is unable to be done, then it will just be a parcel with excess land that will ultimately become part of the corner parcel.

In response to questions posed by Schwinn, Hunzeker indicated that without the change of zone, the property cannot be subdivided.

Carlson believes that the access issue remains even if the Planning Commission approves the change of zone to R-1. Hunzeker concurred. The access was relinquished as part of the Country Meadows plat. The change of zone will not fix the access problem. Without the access issue being resolved to the satisfaction of the Planning Director, he is not going to approve the administrative plat.

Schwinn assumes that the Hannans go into this change of zone knowing that they may not get there. Hunzeker acknowledged this fact.

Public hearing was closed.

**CHANGE OF ZONE NO. 3385**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Bills-Strand moved to approve the change of zone from AGR to R-1, seconded by Duvall. Bills-Strand believes the details can be left to the City Council.

Carlson stated that he will support the motion because he is supporting the concept of subdividing the parcels. He agrees that the access needs to be worked out.

Motion for approval carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**WAIVER NO. 03000**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Duvall made a motion to approve, seconded by Bills-Strand.

Carlson noted that it is not a condition of approval, but it should be noted that the owner will agree to the creation of a sidewalk district in the future and he thinks this is appropriate. Schwinn believes the sidewalk district is part of the Pine Lake Road project.

Motion for approval carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**SPECIAL PERMIT NO. 1423F,**

**AN AMENDMENT TO THE HIMARK ESTATES**

**COMMUNITY UNIT PLAN,**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 84<sup>TH</sup> STREET AND PIONEERS BLVD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed by the Commissioners.

Greg Czaplewski of the Planning staff submitted one letter in opposition from Pius T. Gange, 5033 Sawgrass Drive.

**Proponents**

**1. Dan Muhleisen** appeared on behalf of the owner and developers of **HiMark Estates**. The only purpose of this application is to correct an error caught by Building & Safety on the drawing. This amendment will identify Lots 7-48, Block 2, as duplex lots with zero setbacks

on all lot lines. This amendment will not increase the number of dwelling units. They have been building the lots in this manner. This amendment will not affect any of the residents of HiMark or the adjacent neighborhoods.

Muhleisen indicated that he would contact the person who wrote the letter in opposition. They thought this would provide for additional townhouse uses and this is not an amendment to do that. This is just a correction to a general note that pertains to the existing townhomes in HiMark Estates.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Duvall made a motion to approve the staff recommendation of conditional approval, as set forth in the staff report dated January 17, 2003, seconded by Carlson and carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**SPECIAL PERMIT NO. 1998**  
**FOR A RECREATIONAL FACILITY**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 84<sup>TH</sup> STREET AND SOUTH STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

Staff recommendation: Denial.

ExParte Communications: Schwinn acknowledged that he had a discussion with J.D. Burt this morning about procedural issues in this meeting. No substantive issues on the special permit were discussed.

Brian Will of Planning staff submitted letters from Dr. and Mrs. F. Edward Stivers and Craig and Pamela Schumacher in opposition; and a letter from Linda K. Inman with concerns about lighting. Will also submitted a new Condition #6 to be added to the conditions of approval regarding the building of South Street to city standards:

The City will initiate annexation of the South Street right-of-way from South 84<sup>th</sup> Street east to a point 50' beyond the end of the proposed temporary termination of the South Street paving.

Will explained that the County Engineer was asked to review this application because it is going to remain in the County. As a result, some additional improvements were requested by County Engineer. Since then, Public Works has coordinated with the County Engineer and resolved those issues. They have come to agreement on the improvements. This additional condition makes the maintenance the responsibility of the city.

### Proponents

1. **J.D. Burt** of Design Associates presented the application on behalf of **Nebraska Tennis, L.L.C.**, the contract purchaser of this site. He provided a handout of background information, stating that the Nebraska Tennis Center has looked long and hard for a site for this facility. It first started out in the Fallbrook Addition; it was then moved on a temporary basis to 84<sup>th</sup> and South; it was then included in a development plan on property at 84<sup>th</sup> & Hwy 2. Because of situations beyond their control with infrastructure timing and cost of the property, the 84<sup>th</sup> & Hwy 2 site was abandoned. They returned to the 84<sup>th</sup> and South site, and after meeting with city staff, they agreed to pursue locating at Seacrest Field. After meeting with Parks and LPS, the Seacrest Field location was also abandoned because it was just not going to work out for this use to be located on publicly owned property. Thus, they have returned to the 84<sup>th</sup> & South Street site, which is where they really started.

Burt provided an overview of the project which will consist of enclosures for two tennis structures, being an air supported structure with insulation that would block the light; a central steel building with brick veneer or some other cosmetics and 12 outdoor courts. The applicant has agreed with staff that the lighting should be turned off at a certain time in the evening.

Burt also provided a letter from Ross Wunderlich regarding sanitary sewer service. Burt explained that the plan had originally discussed annexation only for the purposes of providing municipal water. It was never this applicant's intent to ask the city to pay for or provide a lift station or public sewer. This is not a viable option at this location at this time, and Burt believes they have addressed Mr. Wunderlich's questions.

Burt also provided a letter from Aldersgate United Methodist Church also wrote a letter with concerns about traffic, parking and the extension of South Street. Mr. Burt's responded to the church and has heard nothing further.

Burt also submitted letters in support from Thomas Tipton and William Roper of Roper and Sons, the adjacent property owner. Roper and Sons supports the project and is willing to consent to a relaxation of the side yard setback and the request to waive the height.



Burt stated that he is not certain they need the height waiver. It has been included in the application because when you measure the height of the building, you measure the average height between the wall and the top of the building. This particular building is an arch and the waiver has been requested to allow 52'. The size of the main building has since been reduced and it is only the air supported structures that will exceed the 35'.

Burt also submitted proposed amendments to the conditions of approval. In general, they do not object to the staff conditions with the exception of sidewalks along South Street. He understands the need to provide pedestrian access from 84<sup>th</sup> Street and he has no objection to provide sidewalks on the south side and internally (Condition #1.1.1). Burt requested that the building setback minimum be reduced from 100' to 60' from the south and east property lines (Condition #1.1.2). The applicant does not object to eliminating the lighting at 10:00 p.m. and suggested adding language to Condition #1.1.7 that the indoor tennis courts located in non-opaque buildings and outdoor tennis court lights shall be turned off between the hours of 10:00 p.m. and 6:00 a.m. Burt requested that the maximum height be allowed to 48' as opposed to 52' (Condition #2).

**2. Dave Northey**, President and Owner of **Nebraska Tennis Center**, 3033 Mandarin Court, testified in support. He believes this is the best of those sites which they have investigated. He expressed how important this project is for the city, not only for the benefit of the tennis player, but also economically with the type of events that will be coming to Lincoln. There will be quite a few things going on within the complex--it is also a full scale health club--fitness, basketball, volleyball, small pool, concession stand and a place for members to keep their children. The whole idea is to get a very family-oriented complex. There will be several programs involved including USTA, ITF and several other organizations including PTR (a teaching organization). The desire is to have a World Class Junior Training Center which will allow a lot of the kids to take tennis at whatever level they want. This is something very new to the Midwest. This kind of a facility will offer training for the children who currently must leave the community to receive this type of training. He believes Nebraska and the surrounding states will benefit from this facility.

**3. Darryl Rahn** testified in support and on behalf of wheelchair tennis players. There are about 8-10 people in the community that play wheelchair tennis. He plays all around the country in a competitive fashion. In Lincoln, there is no place for an accessible wheelchair tennis facility. He believes this will benefit the wheelchair tennis players greatly.

**4. Nick Vuko**, 1501 So. 98<sup>th</sup>, testified in support. He is a born and raised junior tennis player and he finished his career at Valparaiso University. He has seen some centers around the nation and Nebraska pales in comparison to all of those facilities.

**5. Charles Yearley** testified in support. He has a Masters Degree from UNL in Planning and has worked as regional planner in Iowa. He has assisted with projects that were funded for

recreational use. This is an appropriate use for this area. With the small amount of wetlands, it would be a good use for the area.

**6. Chuck Berst**, 8021 Lillibridge, testified in support. He lettered in tennis three years in high school. He left the game because there are not a lot of facilities in Lincoln to play tennis. He believes this center will be a very good facility for everyone at all levels. Schwinn pointed out that the Lincoln Racquet Club is closed Friday night and all day Saturday.

**7. Jeff Gomon**, 3130 Jasper Court, testified in support. He does not play tennis but he is looking for a health facility for working out. His biggest problem is that the other facilities are too crowded or closed on the weekend. He has found that Prairie Life Center has over 6,000 members and the Racquet Club has about 4,500 members. With the populous of this city and the surrounding areas, he believes this facility would be well received. He believes people will go to this facility.

**8. Pam Sock**, 9500 Calvert Street, testified in support on behalf of some of the junior competition. She has two sons who got involved in this sport. They progressed to Woods Tennis Center because the Racquet Club was closed on Saturdays. The Woods tennis pro has since left. It is really hard for this city to keep talent here to train the youngsters. She has put 25,000 miles on her vehicle in the last six months driving to tournaments that cannot be hosted in Lincoln. Her children are having a hard time getting court time. To be competitive you need to get an average of 12-20 hours a week. Her children can only get 5 hours in a week in Lincoln. They have to share courts with adults and the juniors. Lincoln does not have the facilities to host any of the big meets. There is no food and beverage service available. There are no bleachers or enough space. We need indoor courts. This is a huge loss of revenue to the City.

### Opposition

**1. Pam Schumacher**, 8420 Norval Road, which is two streets to the north of the proposed facility, testified in opposition. The development sounds fine but the Planning Commission needs to remember that, based on the Comprehensive Plan, this area is shown as urban residential. The staff report states that this facility does not fit the neighborhood. It would probably be an asset to the City but it needs to be located somewhere else. We can't just go in and put in our homes or residences until the Stevens Creek Watershed problem is fixed. If we insert this facility, it will affect how we decide what to do to the south, east and north. We don't want leapfrog type planning chopping up 84<sup>th</sup> Street.

### Staff questions

Carlson appreciates the comments about the community being under-served by tennis courts, but he wants to address the site specific situation, i.e. difficulties with the height and the need

for setback with regard to future development. Brian Will of Planning staff stated that the staff does not dispute the testimony in support; however, when we look at the future land use in the Comprehensive Plan, this property is designated as urban residential. One of the concerns we have for this facility, being the first development to come in south of South Street and east of 84<sup>th</sup> Street, is that it is going to in some way set the tone for development in that area. Another concern is the height of the building and its proximity to the property lines. The Comprehensive Plan talks about urban residential land uses and we must consider the fact that homes may be constructed adjacent to the east and south. This being the first development in, we are also concerned that there may be additional pressure for the residential development not to be as acceptable as some more intensive land use. It creates potential for pressure for commercial type land uses in the future adjacent to this property. Recreational facilities like this are appropriate in residential areas, provided they are done in a way that is compatible and consistent with the neighborhood. The staff recommends that the scale and scope of this facility is not consistent with being in a neighborhood.

Carlson noted a comment about a LES easement in relation to the setback. Will explained that there is an LES easement running diagonally through the site from the southwest corner to the northeast corner. It affects how the applicant can develop the property in that they cannot locate any buildings within that easement. It is an impediment and has an impact on the layout of the project. That is part of the reason why the building is proximately situated to the south and east property lines.

Schwinn noted other facilities in Lincoln, i.e. the Abbott Sports Complex is located in I-1 zoning and the Spirit Soccer facility is located in either AG or AGR zoning behind the State Farm complex.

Newman inquired about the land where the fire station is located. Is it public land and is it developable? Will advised that it is zoned P Public because the public facility is located there. The area to the south is also supposed to be urban residential sometime in the future.

#### **Response by the Applicant**

Burt responded to the issue regarding the LES easement. A couple of things enter into the layout. In a perfect world, we would prefer a flat site without a LES easement cutting it in two pieces and a wetland that further divides it. They tried to take the existing zoning and work within the limits of the setbacks for a recreational facility allowed by special permit. The same recreational facility is allowed in R-1, R-2 and R-3. This proposal does not seek a change of zone. This gives the city a good opportunity to maintain the residential integrity of this parcel, particularly when you look at who would want to build a house underneath or beside a LES line or who would want to have wetlands in their back yard. LPS owns 20 acres immediately to the south and we do not know whether they are going to develop that as a school. This does not create a commercial environment. There is not a request for commercial zoning.

With respect to the waivers on the setbacks, Burt stated that the applicant would prefer not to have the waivers; however, there is a critical mass that must be maintained for financial feasibility and this development is at that critical mass. LES will not allow tennis courts in that easement and buildings cannot be built in that easement. They are also required to maintain proper distances between tennis courts for tournament type facilities. If the facility could be designed without those waivers, they would certainly do so. It just doesn't fit without moving the LES easement.

Burt offered that this facility does have support of the neighbors on the east property line. Schwinn referred to the elevations on p.77. Burt explained that there is about 25' of fall between 84<sup>th</sup> and the bottom of the drainageway. Public Works is requiring and the applicant does not object to building an urban section through there. The proposal by the applicant is that at the end of the pavement, they go back down to natural grade so that it does not disrupt any more wetlands than necessary. Schwinn is trying to get a sense of the view of the bubbles and courts when driving down So. 84<sup>th</sup>. Burt suggested that the tree masses are going to hide a considerable amount of the buildings as you drive down 84<sup>th</sup> Street. There is a 30' distance between the LPS ground elevation and this development's uppermost elevation on the buildings. On the south property line there is a 12' to 15' cut to get that building at its location. The applicant has agreed to do plantings along the south and east side which will be mature by the time the surrounding area develops.

Carlson noted that this developer will own land on both sides of South Street. Why waive the sidewalks? Burt stated that the sidewalks won't go anywhere. They lead to a hole. The developer is not opposed to a sidewalk district when it comes around. That is a remnant parcel.

Newman inquired about discussions with the neighbors, and particularly the cluster of homes on Pinedale. Burt stated that they sent a letters to 177 neighbors.

Taylor believes there should be some sort of compromise. Can staff offer anything in terms of the setback. Will indicated that the site plan as submitted requests a waiver of the setback. Staff is recommending denial; however, there are conditions included should the Planning Commission with to approve this application. Those conditions require that the setback be 100' as opposed to 60'. Short of designing the facility for the applicant, the staff is recommending that it is not appropriate as submitted.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:****February 19, 2003**

Duvall moved approval, with the conditions as set forth in the staff report, with the amendments as requested by the applicant, seconded by Schwinn.

Duvall believes this is a very difficult project in a really difficult place. He believes the applicant has tried extremely hard to make a go of it. He believes it looks reasonable, even though in a residential neighborhood. He believes the uses are appropriate but he agrees that the site is challenging.

Carlson commented that the use is certainly appropriate and the need is real. But the scale of the project being pretty dramatic gives him pause as well as the unknowns as to what will be allowed. He believes that staff is on the mark in their analysis.

Newman agreed with Duvall and Carlson. It is a very challenging site and it may be the best use for the site, but she is concerned with the intensity of the use in a residential area and she will vote no.

Taylor stated that he really likes the project, but it appears to be a very ambitious project. Based upon the concerns of the neighbors in opposition, he is not comfortable with it being in that area.

Bills-Strand struggles with a decision because when she looks at East High, she sees the soccer field, the track, Seacrest field, the lights and a wonderful neighborhood all around it that doesn't seemed bothered. This is going to have a school next door and she sees no difference.

Schwinn stressed that Lincoln is woefully short of this type of facility, especially for youth. It is not the first development over the edge. Four years ago we approved Lincoln Benefit Life and we gave them a lift station. He believes that had this been incorporated with Lincoln Benefit Life, it would have gone through four years ago with no problem. Because of the elevations he believes it will be low enough that it will not be intrusive into the neighborhood and these types of facilities should be located closer to where people live. Driving to Abbott is not a pleasant thing to do every day. We have precedent for putting these facilities in AGR districts. There is also precedent for having them in residential neighborhoods. There appears to be no problem selling houses around the Dan Hartog and Seacrest Field locations. He will support this project. He also has some problems with the site and the dramatic change to it, but anybody that moves in later will know that that project exists and it is easier to site it now. He also noted that no one on Pinedale Road testified in opposition or wrote letters. He believes the applicants made good effort to contact the neighborhood.

Bills-Strand pointed out that the Lincoln Racquet Club also sits on low grade so that it doesn't stick up quite so high and there are residential uses to the south.

Carlson believes there is a difference between football and soccer fields and tennis courts.

Motion for conditional approval, with amendments, failed 3-3: Bills-Strand, Duvall, and Schwinn voting 'yes'; Newman, Carlson and Taylor voting 'no'; Krieser, Larson and Steward absent.

This item was held over for administrative action on March 5, 2003. Public hearing has been closed.

**ANNEXATION NO. 02010;**  
**CHANGE OF ZONE NO. 3390,**  
**FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;**  
**SPECIAL PERMIT NO. 1995,**  
**HUB HALL HEIGHTS COMMUNITY UNIT PLAN;**  
**and**  
**PRELIMINARY PLAT NO. 02025, HUB HALL HEIGHTS,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N.W. 48<sup>TH</sup> STREET AND W. HOLDREGE STREET.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the community unit plan and preliminary plat.

There were no ex parte communications disclosed by the Commissioners.

Proponents

**1. Hub Hall**, the developer, presented the application. He has met with City and has approval to proceed. We have called this plat "Heights" because it is one of the highest points in Lancaster County. There are lots of trees and lots of open space. The intent is to keep most of the trees except where a street may go through. He has counted 161 lots that back up to open space and to trees. The apartment units and 10 acres for the church site will help to improve the area. He believes this development will be a great improvement to the City.

**2. Brian Carstens** testified on behalf of the developer to discuss issues to be resolved. The extension of N.W. 40<sup>th</sup> Street is an issue. N.W. 40<sup>th</sup> was originally shown to be extended slightly north and then curve over to the east. The neighbor to the east finds this unacceptable. The developer worked with them to extend it straight north which was also unacceptable. They have also met with Dennis Bartels of Public Works, who suggests curving it over to the north and west. This would require filling 26' through the draw to get the road in with 6% slopes

going down hill and would remove about 200' in width of trees through that draw. Carstens proposed that N.W. 40<sup>th</sup> Street not be extended north of Holdrege Street, and requested to add condition #1.1.26 to the preliminary plat: Delete future extension of N.W. 40<sup>th</sup> Street north of W. Holdrege.

Carstens requested that Condition #1.1.9 on the preliminary plat be deleted: W. Faesy Place extended north to No. 44<sup>th</sup> Street. Due to grading issues, it will not be possible to get the street up to No. 44<sup>th</sup> Street and the applicant believes a waiver of the block length is appropriate because of the topography of the site.

Carstens indicated that they will continue to work with staff on the street names (Condition #1.1.10).

### **Opposition**

**1. Barbara Erickson and Martin Erickson**, the owners of Lot 27, SW1/4 of 17-10-6, and the adjacent 5.25 acres, testified in opposition to the extension of N.W. 40<sup>th</sup> Street. They have lived on the land for 22 years and have planted over 400 trees. If N.W. 40<sup>th</sup> Street is extended north, they would request a condition that all of N.W. 40<sup>th</sup> be used by the new development and that none of their land be taken away. Currently, they are showing N.W. 40<sup>th</sup> curving right into the Erickson property. At first, they were running N.W. 40<sup>th</sup> Street right into the Erickson property. The Ericksons desire to keep their land and their trees as they exist. If the street is not built, the Ericksons request that a condition of approval require that the lots located along the Erickson property line allow for a 66' future right-of-way in case there is a N.W. 40<sup>th</sup> extended at some point in the future. Another concern is the location of the sewer system. Is it going to go through their property? They have not seen any plans on the sewer system.

Martin Erickson expressed concerns about the noise issues with regard to the airport, etc. Carlson inquired of staff regarding the sewer. Dennis Bartels of Public Works indicated that the lot is not developable until sewer is available from the east or northeast. At some point in time, the sewer will have to either go across their lot or in close proximity to get sewer service to serve the apartments. The apartments cannot be gravity sewer straight north where the single family lots are proposed to be served. The single family lots are sewerable today with extensions from Ashley Heights. In Bartels' estimation, the apartment complex will not be able to be served until such time as the Oak Creek sanitary sewer is extended or parallel sewer identified to bring it to the south end of the airport runway. It is probably not feasible to get sewer into this facility until such time as that trunk sewer is built and sewer is extended from the trunk sewer. At this point, it will be an 8" sanitary sewer that we would normally expect to see as development occurs. However, the city is not unknown to negotiate or condemn an easement. The city has ways to get the sewer through but the city would have to pay for the easement and restore the area that was disturbed.

Carlson noted that there are conditions placing the burden upon the landowner of the apartments. Bartels indicated that the City will not initiate a project to make it sewerable. If it was to go across the Erickson's property, it would have to happen through an assessment district and would take City Council action. We cannot arbitrarily build a sewer across their property.

Carlson inquired as to the long term road network in this area. Bartels referred to the county road and Holdrege Street. The road east of this property was vacated by the County. There are no streets east or north of the 40<sup>th</sup> & Holdrege intersection, and the staff has recommended the 40<sup>th</sup> Street intersection be shown there because the existing 40th Street right-of-way splits that property line. It would have to start at a point which would take right-of-way from both properties. It would help protect the development potential of that property. They have 30' of frontage. Bartels believes 40<sup>th</sup> is as good a location as we can get. There is only one street at the 1/4 mile point and this would put another access point at the 1/2 mile line giving us the standard quarter mile spacing of streets. This 40<sup>th</sup> Street is not a lot of benefit to Mr. Hall's project, but the bigger benefit was visioned to be the future potential subdivision of the properties to the east.

Carlson inquired as to current and proposed development to the east and north. Becky Horner of Planning staff advised that the property is outside the urban service area and it is all AG zoning. The area east of here is within the current noise contour and does not allow residential. The Airport Authority is studying that presently but nothing has been adopted at this time. This particular area is in Tier I. The area to the east is not. The area to the north is also Tier I.

Bills-Strand made further inquiry into N.W. 40<sup>th</sup> Street. Bartels indicated that he does not object to curving it to the west. But as you approach Holdrege Street, it seemed more appropriate to line the interaction of 40<sup>th</sup> Street up with 40<sup>th</sup> as it goes south of Holdrege. The plan is envisioning that 40<sup>th</sup> Street would bend to the east. We're just looking at 40<sup>th</sup> as a collector type street to provide local access. As you go further north, there is no way to tie it into an arterial street system. It is basically a local street beyond the intersection north of Holdrege. Bartels tried to consider the land uses, but there are no uses yet identified to the east. If it provides primary access to an industrial area, it may not be the best spot for a residential street. The city has no desire to go and condemn the right-of-way and force that street to be built until development occurs to the east. Holdrege Street is vacated east of 40<sup>th</sup> Street.

Ray Hill of Planning staff referred to the aerial photograph on page 56. The developer did not want to cross any more of the wooded area than is necessary. If 40<sup>th</sup> went straight north it would go through the middle of that wooded area. By swinging it to the east it moves away from and does not go through the wooded area. We have not required 40<sup>th</sup> Street along the east side of any of the residential developments further to the north of this project. Typically,



the grid system is for the mile sections. 48<sup>th</sup> Street is the north/south carrier through this area and to have another street parallel would not be appropriate.

Bills-Strand wondered what happens to the Erickson property if nothing is done with 40<sup>th</sup> Street and this plat is approved. Hill advised that whenever that area is available for development and for subdivision, then they would tie into the street system that is proposed in this area, just like this area has tied onto the development to the north. The staff did ask that a street extend to the east so that as that area does become available for development, it has a street pattern to tie onto.

Schwinn asked whether staff agrees with the developer that we do not want to do the evasive grading through the green space. Hill indicated that staff agrees with the layout as proposed. Staff is requesting the extension of N.W. 40<sup>th</sup> Street and the curving to the east is acceptable. The road would not have to be built until the Ericksons decide they want to subdivide or it is needed for the multi-family area in this development.

Carstens stated that the apartments will not be built until the sewer is brought in. West Gately Street has been relocated. The south right-of-way will touch the Erickson lot line but will never go through their property. It will only be adjacent.

Marvin Krout, Director of Planning, believes that a note can be added to the plat regarding this discussion about N.W. 40<sup>th</sup> Street and the language can be worked out between now and the City Council.

Public hearing was closed.

**ANNEXATION NO. 02010**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Carlson made a motion to approve, subject to an annexation agreement, seconded by Newman and carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**CHANGE OF ZONE NO. 3390**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Taylor made a motion to approve, seconded by Newman and carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**SPECIAL PERMIT NO. 1995,**  
**HUB HALL HEIGHTS COMMUNITY UNIT PLAN**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Newman moved to approve the staff recommendation of conditional approval, seconded by Bills-Strand and carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

**PRELIMINARY PLAT NO. 02025,**  
**HUB HALL HEIGHTS**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

Bills-Strand moved to approve the staff recommendation of conditional approval, with amendments deleting Condition #1.1.9 and adding Condition #1.1.26, such that dedication of the right-of-way would only be triggered at the request of the adjoining property owner (specific language to be drafted by staff prior to City Council), seconded by Taylor and carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.

There being no further business, the meeting was adjourned at 3:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 5, 2003.